

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT

BINAIFER DHOLOO,
Plaintiff,

v.

SHIRE-NPS PHARMACEUTICALS,
INC., a Delaware corporation;
BAXALTA US INC., a Delaware
corporation; and DOES 1-50,
inclusive,
Defendants.

Case No. 2:19-cv-01357 MWF-AGRx

**ORDER RE: STIPULATION AND
PROTECTIVE ORDER**

District Judge: Hon. Michael W.
Fitzgerald

Magistrate Judge: Hon. Alicia G.
Rosenberg

Final Pre-Trial Conf: June 8, 2020
Trial Date: June 30, 2020
LASC Complaint Filed: January 3,
2019

1. 1.

2. A. PURPOSES AND LIMITATIONS:¹

3. Discovery in this action is likely to involve production of confidential,
4. proprietary, or private information for which special protection from public disclosure
5. and from use for any purpose other than prosecuting this litigation may be warranted.
6. Accordingly, the parties hereby stipulate to and petition the Court to enter the
7. following Stipulated Protective Order. The parties acknowledge that this Order does
8. not confer blanket protections on all disclosures or responses to discovery and that the
9. protection it affords from public disclosure and use extends only to the limited
10. information or items that are entitled to confidential treatment under the applicable
11. legal principles. The parties further acknowledge, as set forth in Section 12.3, below,
12. that this Stipulated Protective Order does not entitle them to file confidential
13. information under seal; Civil Local Rule 79-5 sets forth the procedures that must be
14. followed and the standards that will be applied when a party seeks permission from
15. the court to file material under seal.

16. B. GOOD CAUSE STATEMENT

17. This action is likely to involve materials that are confidential because they
18. include any one of the following: (a) individual personal information that is protected
19. from disclosure under state or federal law (including identifying personal financial
20. information); (b) trade secrets; (c) confidential research and development that, if
21. disclosed to the general public or competitors of the Designated Party, could
22. reasonably be expected to cause identifiable, significant harm to the Designating
23. Party; (d) confidential financial information that, if disclosed to the general public or
24. competitors of the Designating Party, could reasonably be expected to cause

25. _____
26. ¹ This Stipulated Protected Order is based on the Honorable Alicia Rosenberg's "Final
27. Form Stipulated Protective Order" (Revised September 16, 2014), *available at*
28. [https://www.cacd.uscourts.gov/sites/default/files/documents/AGR/AD/FINAL%20FO
RM%20STIPULATED%20PROTECTIVE%20ORDER%20%5BREVISSED%20SEP
T%2016%202014%5D.pdf](https://www.cacd.uscourts.gov/sites/default/files/documents/AGR/AD/FINAL%20FORM%20STIPULATED%20PROTECTIVE%20ORDER%20%5BREVISSED%20SEPT%2016%202014%5D.pdf)

1 identifiable, significant harm to the Designating Party; (e) competitive compensation
2 structures or information regarding individual employee compensation; (f)
3 information that the Designating Party has a duty to a third-party or to the court to
4 maintain as confidential; or (g) information otherwise generally unavailable to the
5 public, or which may be privileged or otherwise protected from disclosure under state
6 or federal statutes, court rules, case decisions, or common law (collectively,
7 “Confidential Information”). The parties respectfully submit that good cause exists to
8 protect these narrow categories of information as confidential. *See, e.g., Foltz v. State*
9 *Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1134 (9th Cir. 2003) (protective order
10 appropriate to protect “trade secrets, financial information, and third-party medical or
11 personnel information”); *Algarin v. Maybelline, LLC*, 2014 WL 690410, at *3 (S.D.
12 Cal. Feb. 21, 2014) (granted a protective order that covered information that was
13 considered by L'Oréal to be a valuable asset to its product research and development.);
14 *Humboldt Baykeeper v. Union Pac. R. Co.*, 244 F.R.D. 560, 563 (N.D. Cal. 2007)
15 (protective order appropriate where “disclosure . . . would cause an identifiable,
16 significant harm”).

17 Accordingly, to expedite the flow of information, to facilitate the prompt
18 resolution of disputes over confidentiality of discovery materials, to adequately
19 protect information the parties are entitled to keep confidential, to ensure that the
20 parties are permitted reasonable necessary uses of such material in preparation for and
21 in the conduct of trial, to address their handling at the end of the litigation, and serve
22 the ends of justice, a protective order for such information is justified in this matter. It
23 is the intent of the parties that information will not be designated as confidential for
24 tactical reasons and that nothing be so designated without a good faith belief that it
25 has been maintained in a confidential, non-public manner, and there is good cause
26 why it should not be part of the public record of this case.

27 2. DEFINITIONS

28 2.1 Action: [this pending federal law suit]. [*Option: consolidated or related

actions.]

2.2 Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

2.3 “CONFIDENTIAL” Information or Items: information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause Statement.

2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their support staff).

2.5 Designating Party: a Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

2.6 Disclosure or Discovery Material: all items or information, regardless of the medium or manner in which it is generated, stored, or maintained (including, among other things, testimony, transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery in this matter.

2.7 Expert: a person with specialized knowledge or experience in a matter pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a consultant in this Action.

2.8 House Counsel: attorneys who are employees of a party to this Action. House Counsel does not include Outside Counsel of Record or any other outside counsel.

2.9 Non-Party: any natural person, partnership, corporation, association, or other legal entity not named as a Party to this action.

2.10 Outside Counsel of Record: attorneys who are not employees of a party to this Action but are retained to represent or advise a party to this Action and have appeared in this Action on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party, and includes support staff.

1 2.11 Party: any party to this Action, including all of its officers, directors,
2 employees, consultants, retained experts, and Outside Counsel of Record (and their
3 support staffs).

4 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
5 Discovery Material in this Action.

6 2.13 Professional Vendors: persons or entities that provide litigation support
7 services (e.g., photocopying, videotaping, translating, preparing exhibits or
8 demonstrations, and organizing, storing, or retrieving data in any form or medium)
9 and their employees and subcontractors.

10 2.14 Protected Material: any Disclosure or Discovery Material that is
11 designated as “CONFIDENTIAL.”

12 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material
13 from a Producing Party.

14 3. SCOPE

15 The protections conferred by this Stipulation and Order cover not only
16 Protected Material (as defined above), but also (1) any information copied or extracted
17 from Protected Material; (2) all copies, excerpts, summaries, or compilations of
18 Protected Material; and (3) any testimony, conversations, or presentations by Parties
19 or their Counsel that might reveal Protected Material. Any use of Protected Material at
20 trial shall be governed by the orders of the trial judge. This Order does not govern the
21 use of Protected Material at trial.

22 4. DURATION

23 Even after final disposition of this litigation, the confidentiality obligations
24 imposed by this Order shall remain in effect until a Designating Party agrees
25 otherwise in writing or a court order otherwise directs. Final disposition shall be
26 deemed to be the later of (1) dismissal of all claims and defenses in this Action, with
27 or without prejudice; and (2) final judgment herein after the completion and
28 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,

including the time limits for filing any motions or applications for extension of time pursuant to applicable law.

5. DESIGNATING PROTECTED MATERIAL

5.1 Exercise of Restraint and Care in Designating Material for Protection.

Each Party or Non-Party that designates information or items for protection under this Order must take care to limit any such designation to specific material that qualifies under the appropriate standards. The Designating Party must designate for protection only those parts of material, documents, items, or oral or written communications that qualify so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this Order.

Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily encumber the case development process or to impose unnecessary expenses and burdens on other parties) may expose the Designating Party to sanctions.

If it comes to a Designating Party's attention that information or items that it designated for protection do not qualify for protection, that Designating Party must promptly notify all other Parties that it is withdrawing the inapplicable designation.

5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so designated before the material is disclosed or produced.

Designation in conformity with this Order requires:

(a) for information in documentary form (e.g., paper or electronic documents, but excluding transcripts of depositions or other pretrial or trial proceedings), that the

1 Producing Party affix at a minimum, the legend “CONFIDENTIAL” (hereinafter
2 “CONFIDENTIAL legend”), to each page that contains protected material. If only a
3 portion or portions of the material on a page qualifies for protection, the Producing
4 Party also must clearly identify the protected portion(s) (e.g., by making appropriate
5 markings in the margins). A Party or Non-Party that makes original documents
6 available for inspection need not designate them for protection until after the
7 inspecting Party has indicated which documents it would like copied and produced.
8 During the inspection and before the designation, all of the material made available
9 for inspection shall be deemed “CONFIDENTIAL.” After the inspecting Party has
10 identified the documents it wants copied and produced, the Producing Party must
11 determine which documents, or portions thereof, qualify for protection under this
12 Order. Then, before producing the specified documents, the Producing Party must
13 affix the “CONFIDENTIAL legend” to each page that contains Protected Material. If
14 only a portion or portions of the material on a page qualifies for protection, the
15 Producing Party also must clearly identify the protected portion(s) (e.g., by making
16 appropriate markings in the margins).

17 (b) for testimony given in depositions that the Designating Party identify the
18 Disclosure or Discovery Material on the record, before the close of the deposition all
19 protected testimony.

20 (c) for information produced in some form other than documentary and for any
21 other tangible items, that the Producing Party affix in a prominent place on the
22 exterior of the container or containers in which the information is stored the legend
23 “CONFIDENTIAL.” If only a portion or portions of the information warrants
24 protection, the Producing Party, to the extent practicable, shall identify the protected
25 portion(s).

26 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
27 failure to designate qualified information or items does not, standing alone, waive the
28 Designating Party’s right to secure protection under this Order for such material.

1 Upon timely correction of a designation, the Receiving Party must make reasonable
2 efforts to assure that the material is treated in accordance with the provisions of this
3 Order.

4 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

5 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
6 designation of confidentiality at any time that is consistent with the Court's
7 Scheduling Order.

8 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
9 resolution process under Local Rule 37.1 et seq. 6.3 The burden of persuasion in any
10 such challenge proceeding shall be on the Designating Party. Frivolous challenges,
11 and those made for an improper purpose (e.g., to harass or impose unnecessary
12 expenses and burdens on other parties) may expose the Challenging Party to
13 sanctions. Unless the Designating Party has waived or withdrawn the confidentiality
14 designation, all parties shall continue to afford the material in question the level of
15 protection to which it is entitled under the Producing Party's designation until the
16 Court rules on the challenge.

17 7. ACCESS TO AND USE OF PROTECTED MATERIAL

18 7.1 Basic Principles. A Receiving Party may use Protected Material that is
19 disclosed or produced by another Party or by a Non-Party in connection with this
20 Action only for prosecuting, defending, or attempting to settle this Action. Such
21 Protected Material may be disclosed only to the categories of persons and under the
22 conditions described in this Order. When the Action has been terminated, a Receiving
23 Party must comply with the provisions of section 13 below (FINAL DISPOSITION).

24 Protected Material must be stored and maintained by a Receiving Party at a
25 location and in a secure manner that ensures that access is limited to the persons
26 authorized under this Order.

27 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
28 otherwise ordered by the court or permitted in writing by the Designating Party, a

1 Receiving Party may disclose any information or item designated “CONFIDENTIAL”
2 only to:

3 (a) the Receiving Party’s Outside Counsel of Record in this Action, as well as
4 employees of said Outside Counsel of Record to whom it is reasonably necessary to
5 disclose the information for this Action;

6 (b) the officers, directors, and employees (including House Counsel) of the
7 Receiving Party to whom disclosure is reasonably necessary for this Action;

8 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure
9 is reasonably necessary for this Action and who have signed the “Acknowledgment
10 and Agreement to Be Bound” (Exhibit A);

11 (d) the court and its personnel;

12 (e) court reporters and their staff;

13 (f) professional jury or trial consultants, mock jurors, and Professional Vendors
14 to whom disclosure is reasonably necessary for this Action and who have signed the
15 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

16 (g) the author or recipient of a document containing the information or a
17 custodian or other person who otherwise possessed or knew the information;

18 (h) during their depositions, witnesses, and attorneys for witnesses, in the
19 Action to whom disclosure is reasonably necessary provided: (1) the deposing party
20 requests that the witness sign the form attached as Exhibit 1 hereto; and (2) they will
21 not be permitted to keep any confidential information unless they sign the
22 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed
23 by the Designating Party or ordered by the court. Pages of transcribed deposition
24 testimony or exhibits to depositions that reveal Protected Material may be separately
25 bound by the court reporter and may not be disclosed to anyone except as permitted
26 under this Stipulated Protective Order; and

27 (i) any mediator or settlement officer, and their supporting personnel, mutually
28 agreed upon by any of the parties engaged in settlement discussions.

1 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
2 OTHER LITIGATION

3 If a Party is served with a subpoena or a court order issued in other litigation
4 that compels disclosure of any information or items designated in this Action as
5 “CONFIDENTIAL,” that Party must:

6 (a) promptly notify in writing the Designating Party. Such notification shall
7 include a copy of the subpoena or court order;

8 (b) promptly notify in writing the party who caused the subpoena or order to
9 issue in the other litigation that some or all of the material covered by the subpoena or
10 order is subject to this Protective Order. Such notification shall include a copy of this
11 Stipulated Protective Order; and

12 (c) cooperate with respect to all reasonable procedures sought to be pursued by
13 the Designating Party whose Protected Material may be affected. If the Designating
14 Party timely seeks a protective order, the Party served with the subpoena or court
15 order shall not produce any information designated in this action as
16 “CONFIDENTIAL” before a determination by the court from which the subpoena or
17 order issued, unless the Party has obtained the Designating Party’s permission. The
18 Designating Party shall bear the burden and expense of seeking protection in that
19 court of its confidential material and nothing in these provisions should be construed
20 as authorizing or encouraging a Receiving Party in this Action to disobey a lawful
21 directive from another court.

22 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED
23 IN THIS LITIGATION

24 (a) The terms of this Order are applicable to information produced by a Non-
25 Party in this Action and designated as “CONFIDENTIAL.” Such information
26 produced by Non-Parties in connection with this litigation is protected by the
27 remedies and relief provided by this Order. Nothing in these provisions should be
28 construed as prohibiting a Non-Party from seeking additional protections.

(b) In the event that a Party is required, by a valid discovery request, to produce a Non-Party's confidential information in its possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party's confidential information, then the Party shall:

(1) promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;

(2) promptly provide the Non-Party with a copy of the Stipulated Protective Order in this Action, the relevant discovery request(s), and a reasonably specific description of the information requested; and

(3) make the information requested available for inspection by the Non-Party, if requested.

(c) If the Non-Party fails to seek a protective order from this court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its Protected Material.

10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the "Acknowledgment and

1 Agreement to Be Bound” that is attached hereto as Exhibit A.

2 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
3 PROTECTED MATERIAL

4 When a Producing Party gives notice to Receiving Parties that certain
5 inadvertently produced material is subject to a claim of privilege or other protection,
6 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
7 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
8 may be established in an e-discovery order that provides for production without prior
9 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
10 parties reach an agreement on the effect of disclosure of a communication or
11 information covered by the attorney-client privilege or work product protection, the
12 parties may incorporate their agreement in the stipulated protective order submitted to
13 the court.

14 12. MISCELLANEOUS

15 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
16 person to seek its modification by the Court in the future.

17 12.2 Right to Assert Other Objections. By stipulating to the entry of this
18 Protective Order no Party waives any right it otherwise would have to object to
19 disclosing or producing any information or item on any ground not addressed in this
20 Stipulated Protective Order. Similarly, no Party waives any right to object on any
21 ground to use in evidence of any of the material covered by this Protective Order.

22 12.3 Filing Protected Material. A Party that seeks to file under seal any
23 Protected Material must comply with Civil Local Rule 79-5. Protected Material may
24 only be filed under seal pursuant to a court order authorizing the sealing of the
25 specific Protected Material at issue. If a Party's request to file Protected Material
26 under seal is denied by the court, then the Receiving Party may file the information in
27 the public record unless otherwise instructed by the court.
28

13. FINAL DISPOSITION

After the final disposition of this Action, as defined in paragraph 4, within 60 days of a written request by the Designating Party, each Receiving Party must return all Protected Material to the Producing Party or destroy such material. As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations, summaries, and any other format reproducing or capturing any of the Protected Material. Whether the Protected Material is returned or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by category, where appropriate) all the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or any other format reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION).

IT IS SO ORDERED.

DATED: June 7, 2019



Hon. Alicia G. Rosenberg
United States Magistrate Judge

1 EXHIBIT A

2 ACKNOWLEDGEMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare under penalty of perjury that
5 I have read in its entirety and understand the Stipulated Protective Order that was
6 issued by the United States District Court for the Central District of California on
7 [date] in the case of _____ [insert formal name of the case and the number and
8 initials assigned to it by the court]. I agree to comply with and to be bound by all the
9 terms of this Stipulated Protective Order and I understand and acknowledge that
10 failure to so comply could expose me to sanctions and punishment in the nature of
11 contempt. I solemnly promise that I will not disclose in any manner any information
12 or item that is subject to this Stipulated Protective Order to any person or entity except
13 in strict compliance with the provisions of this Order. I further agree to submit to the
14 jurisdiction of the United States District Court for the Central District of California for
15 the purpose of enforcing the terms of this Stipulated Protective Order, even if such
16 enforcement proceedings occur after termination of this action. I hereby appoint
17 _____ [print or type full name] of
18 _____ [print or type full address and
19 telephone number] as my California agent for service of process in connection with
20 this action or any proceedings related to enforcement of this Stipulated Protective
21 Order.

22 Date: _____

23 City and State where sworn and signed: _____

24 Printed name: _____

25 Signature: _____